



7T02 Rec'd PCT/PTO 4 AUG 2003

PCT #11

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: HANS-JOACHIM BAMERT-1 PCT

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SERIAL NO.: 09/856,390 GROUP: 3617

FILED: May 22, 2001

FOR: DEVICE FOR HOLDING THE LOG TRANSMITTER OF A Legal Staff
BOAT SPEEDOMETER International Division

PETITION

Mail Stop PCT LEGAL ADMINISTRATION
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant hereby respectfully petitions the PTO from the decision of "Filing of 35 U.S.C. 111 Application", dated April 8, 2003, and the Notification stating "that the papers are considered filed under 35 USC §111(a)". It is believed that this filing is properly a filing under 35 U.S.C. 371.

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A filing under 35 USC §111 would be a very serious detriment to the right of applicant, since it is possible that the application filed under Section 111 would be rejected based upon applicant's own published priority application.

The applicant never intended to prejudice his own rights under US patent law. It would be inconsistent with 35 U.S.C. 120 to deny applicant his right to have his national stage patent application denied pendency in the U.S. This is because 35 U.S.C. 120 refers to 35 U.S.C. 363, which makes intentional

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applications a part of a claim of continuing patent applications in the U.S. Thus, 35 U.S.C. 120 is not inconsistent with a filing under 35 U.S.C. 371.

A filing under 35 U.S.C. §371 is respectfully requested. Please charge any additional fees therefore to deposit account 03-2468.

Respectfully submitted,

HANS JOACHIM BAMERT

By 
Allison C. Collard, Reg. No. 22,532
Edward R. Freedman, Reg. No. 26,048

1077 Northern Boulevard
Roslyn, New York 11576
(516) 365-9802

Enclosure: Form PCT/DO/EO/911
Copy of Notification

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: MAIL STOP PCT Legal Administration, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on August 1, 2003.


Ingrid Mittendorf

ERF:im



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

U.S. APPLICATION NUMBER NO.	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
09/856,390	Hans Joachim Bamert	BAMERT-1 PCT

COLLARD & ROE, P.C.
1077 Northern Boulevard
Roslyn, NY 11576-1696

CONFIRMATION NO. 8010



Date Mailed: 04/08/2003

FILING OF 35 U.S.C. 111 APPLICATION

The application papers filed are not clearly identified as a submission to enter the national stage under 35 U.S.C. 371 or contain conflicting or no instructions as to whether the papers are filed under 35 U.S.C. 371 or 35 U.S.C. 371. In accordance with 37 C.F.R. 37 C.F.R. 1.495(g), such papers are accepted for filing under 35 U.S.C. 111. Accordingly, the papers do not satisfy the requirements for treatments as the national stage of a PCT 1.16, 37 C.F.R. 1.17 and 37 C.F.R. 1.18.

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PART 1 - ATTORNEY/APPLICANT COPY

FORM PCT/DO/EO/911 (371 Conversion to Regular)

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08 JUL 2002

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UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.govCollard & Roe, P.C.
1077 Northern Boulevard
Roslyn, NY 11576ECR

In re Application of
BAMERT, Hans Joachim
Application No.: 09/856,390
Filing Date: 22 May 2001
Attorney Docket No.: BAMERT-1 PCT
For: DEVICE FOR HOLDING THE LOG
TRANSMITTER OF A BOAT
SPEEDOMETER

NOTIFICATION

This application is before the Office of PCT Legal Administration for consideration of matters arising under 35 U.S.C. §371.

BACKGROUND

On 17 October 2000, applicant filed international application PCT/EP00/10189. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 26 April 2001. The twenty month period for paying the basic national fee in the United States expired on 21 June 2001.

On 22 May 2001, applicant filed a transmittal letter for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee and a preliminary amendment. The preliminary amendment amends the specification to "claim priority under 35 U.S.C. §120 of PCT/EP00/10189, filed on 17 October 2000."

On 13 July 2001, USPTO mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that the translation was defective for the reasons indicated on the attached Notice of Defective Translation (Form PCT/DO/EO/913). The Notice of Defective Translation indicated that the number of claims in the International Application and the number of claims in the translations were not the same.

On 13 September 2001, applicant filed "Response to Notification of Missing Requirements Under 35 USC 371," accompanied by fifteen claims in German and a translation of those claims.

On 10 October 2001, the Office mailed Notification of Defective Response (Form PCT/DO/EO/916) indicating that the current translation was defective as the number of claims in the International Application and the number of claims in the translation were not the same and that the processing fee for late furnishing of the translation and a translation of the application were required.

On 13 November 2001, applicant submitted "Response to Notification of Defective Response," accompanied by a translation.

On 05 December 2001, the Office mailed Notification of Defective Response (Form PCT/DO/EO/916) indicating that the current translation was defective because it was marked up.

On 05 June 2002, applicant submitted "Petition Under Section 711.03(c) - Section 2 and Response to Notification of Defective Response," accompanied by a translation and docket printouts.

DISCUSSION

Any intended filing of an international application as a national stage application must clearly and unambiguously be identified as such and must satisfy all of the conditions set forth in 35 U.S.C. 371(c). The official PTO Notice published in the Official Gazette at 1077 OG 13 entitled "Minimum Requirements for Acceptance of Applications Under 35 U.S.C. 371 (the National Stage of PCT)" states, in part, the following:

The Patent and Trademark Office is continuing to receive application papers which do not clearly identify whether the papers (1) are being submitted to enter the national stage of the Patent Cooperation Treaty (PCT) under 35 U.S.C. 371 or (2) are being filed as a regular national application under 35 U.S.C. 111.

* * *

If there are any conflicting instructions as to which sections of the statute (371 or 111) is intended the application will be accepted under 35 U.S.C. 111.

→ The transmittal letter (Form PTO-1390) filed on 22 May 2001 identified the application as "a filing under 35 U.S.C. 371." However, the transmittal letter (bottom margin) and the preliminary amendment claim benefit under 35 U.S.C. §120 to the PCT application. Applicant's benefit claim under §120 to the international application is inconsistent with a filing under U.S.C. §371. Since applicant has given conflicting instructions, the papers are considered filed under 35 U.S.C. §111(a).

CONCLUSION

For the above reasons, the petition submitted on 05 June 2002 is DISMISSED AS MOOT.

The Notification of Missing Requirements mailed on 13 July 2001 is hereby VACATED.

The Notifications of Defective Response mailed on 10 October 2001 and 05 December 2001 are hereby VACATED.

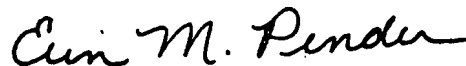
X This application is accepted as an application filed under 35 U.S.C. §111(a) with a filing date of 22 May 2001.

Please direct any further correspondence with respect to this matter to the Commissioner of Patents and Trademarks, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the Office of PCT Legal Administration.

This application is being forwarded to the National Stage Processing Branch of the International Division for processing in accordance with this decision, that is for (1) removal of the papers communicated from the International Bureau to the United States Patent and Trademark Office concerning international application PCT/EP00/10189, (2) correction of information in PALM (computer database) and (3) correction of fees. Afterwards, the application will be forwarded to the Office of Initial Patent Examination for processing as a national application filed under 35 U.S.C. §111(a) with a filing date of 22 May 2001.



Boris Milef
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PCT Legal Administration



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